

APPLICANTS:
John Bush and Annie Walker

REQUEST: A use variance to allow removal of an existing dwelling and replacement with a new single-family dwelling

HEARING DATE: May 10, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5530

ZONING HEARING EXAMINER'S DECISION

APPLICANT: John Bush

CO-APPLICANT: Annie Walker

LOCATION: 3501 Scarboro Road, Street
Tax Map: 19 / Grid: 3A / Parcel: 21
Fifth (5th) Election District

ZONING: GI / General Industrial

REQUEST: A use variance, pursuant to Section 267-32, Table I, of the Harford County Code, to allow the removal of an existing dwelling and replacement with a new log cabin single family dwelling in the GI/General Industrial District.

TESTIMONY AND EVIDENCE OF RECORD:

Co-Applicant Annie Walker testified in support of the Application. Co-Applicant John Bush is the father of Annie Walker. The subject property is owned by John Bush. Annie Walker explained that she, her father, and other family members wish to eventually convey the property Annie Walker's son, Donald K. Walker.

The subject property, which is an approximately 3.5 acre parcel zoned General Industrial, is improved by a house, in poor condition, built about 1941. The house contains outdated electrical and plumbing, and is heated by two in-room kerosene or oil floor heaters. The house is shingled and, based upon the photographs in the file, is not maintained and is in poor condition. The property has a dirt cellar, and an above ground outdoor fuel tank. The property also needs a new well, new septic system, and much interior finish work.

The property has been in Ms. Walker's family since the 1940s.

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According to Ms. Walker, the cost of repairing and upgrading the house will be well over \$150,000.00, whereas a newer house would be not much more. Based upon the condition of the home and the expense of bringing it to habitable condition, Ms. Walker and her family wish to tear the house down and allow her son to build a new log cabin home on the property.

Ms. Walker explained that the family only recently realized that the property is zoned GI, and that the house cannot be removed and replaced with a new home. The home is, in fact, a non-conforming use. While it can be expanded, it cannot be removed and rebuilt. The family, through Ms. Walker, is accordingly asking for a variance to allow the new home to be built.

Ms. Walker further explained that the subject property adjoins on two sides a larger GI zoned property which is used by Maryland Talc as a quarry/manufacturing location. Ms. Walker believes that the subject parcel, which has been used residentially by her family for almost sixty (60) years, was originally re-zoned along with the much large Maryland Talc parcel. She said the subject property has never been connected with Maryland Talc, nor has it ever been used for manufacturing, commercial or industrial uses.

Ms. Walker discussed the proposal with the only neighbor who would be impacted, who lives across the street from the subject property. That neighbor has expressed no opposition. In fact, that neighbor expressed his ignorance of the fact that the subject property was zoned GI.

In support of the application then testified Mary Neads, Ms. Walker's sister. Ms. Neads explained that there was a log cabin on the property many years ago. The property has always been used for residential purposes.

Next for the Harford County Department of Planning of Zoning testified Anthony McClune. Mr. McClune explained that the subject property, prior to the Harford County Comprehensive Re-zoning in 1957, was a separately deeded parcel, as it is today. In 1957 the property, despite its use for residential purposes, was zoned M2. In 1982 it was then changed to GI, and it has remained GI/General Industrial since that time. Mr. McClune believes that the subject property had always been viewed by both the Department of Planning and Zoning Staff Planners and the Harford County Council during comprehensive re-zonings as being part of the surrounding Maryland Talc property. In fact, it was not part of Maryland Talc, and it was an error to consider it as such. Mr. McClune explained that the owners of the subject property, the Bush family, had never requested a change in zoning, and were not aware that the zoning had been changed to General Industrial.

Mr. McClune explained that General Industrial zoning does not permit single family dwellings. Accordingly, the existing home is non-conforming. While it may be expanded up to 50% of its size, such an expansion would not be practical given the age and deteriorating condition of the property. It makes no financial sense to upgrade, according to Mr. McClune.

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Mr. McClune stated that, if the subject property was used for a purpose which would be allowed in this General Industrial zone, the use would, in fact, tend to adversely impact the neighborhood. However, if it remains a residential use there would be no adverse impact. Mr. McClune and the Department of Planning and Zoning recommend approval of the requested variance.

There was no testimony or evidence given in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants, an extended family which has lived on the subject property for many years, finds itself in a fairly unsettling situation, one not of their own making. The Bush family wishes to allow a member of the third generation of the family to use the property to raise his own family, which would be the fourth generation to have lived on the property. However, the house on the property today is in deteriorating condition, with plumbing and electrical not to Code, failing well and septic system, lack of modern heating, obviously little or no installation, etc. It would make no financial sense to attempt to improve the house to correct these deficiencies, particularly given its relatively small size (1,200 square feet).

Instead the family, as would normally be the situation, wishes to raze the house and construct a new one, with more modern conveniences and amenities. However, much to the families' surprise, they have discovered the property is zoned General Industrial, which does not allow single family dwellings, except as non-conforming uses. The property, it should be noted, has never been used for commercial or industrial purposes.

It appears, based on a review of the zoning maps, and in reliance upon Mr. McClune's testimony, that the property was simply included, no doubt inadvertently, with the surrounding Maryland Talc property which is much greater in size than the subject property, and which surrounds the subject property on two sides. While there is some scattered General Industrial throughout the neighborhood, the predominant uses in the immediate area are agricultural and residential.

It is also important to note, and it is so found, that the manufacturing zoning in 1957 and the subsequent General Industrial zoning given to the property was not requested by the Applicants. There is little doubt that the Applicants would be able to secure a re-zoning of their property to its correct Agricultural zoning (which would allow single family dwellings as a matter of right as proposed by the Applicants), during the next County wide comprehensive re-zoning. However, it is certainly not fair, and would create a hardship upon the Applicants, if they were forced to wait until that takes place in order to begin the process of replacing the home with something more contemporary and useful.

Accordingly, while certainly not a typical application, it is found that the property suffers a very unique circumstance which creates hardship upon the Applicants. The relief requested, being a variance to allow them to demolish the existing home and replace it with a new single family dwelling, is the minimum necessary to secure the relief requested. It is further found there will be no adverse impact on the adjoining property, or upon the neighbors, if the requested variance were granted.

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CONCLUSION:

Accordingly, it is recommended the requested variance be approved, subject to the Applicants obtaining all necessary permits for the removal of the existing dwelling and construction of the new dwelling.

Date: June 26, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 26, 2006.